

October 15, 2002

To: NOSB Livestock Committee [NOSB.Livestock@usda.gov](mailto:NOSB.Livestock@usda.gov),  
and Katherine Benham [Katherine.Benham@usda.gov](mailto:Katherine.Benham@usda.gov)

From: Leslie Zuck, Executive Director  
Pennsylvania Certified Organic (PCO)

RE: NOSB Livestock Committee recommendation posted for comment

Issue #3 -- Organic management of dairy animals after conversion

PCO supports the Livestock Committee's recommendation and believes that it is consistent with the intent of the Final Rule and OFPA. We believe that requiring all dairy animals (including purchased replacements) be managed organically from the last third of gestation is the fairest and most logical interpretation and we commend the committee for taking this position. The requirement will not be a heavy burden on PCO's 90-some organic dairy producers, as PCO and AOS standards have always contained that requirement. However, we have permitted exceptions in certain (documented) situations and we realize that other organic producers will have to make changes in order to meet the "last third" requirement. Permitting producers and certifiers to work within their Organic System Plans to come into compliance would be a reasonable and fair means of keeping noncompliant operations in business without discriminating against operators who already meet the "last-third" requirement.

We suggest that language to that effect be added to the NOSB Livestock Committee's recommendation as follows:

"The committee anticipates that producers and certification agents will work within their organic systems plan to meet this requirement within a reasonable time, depending on the constraints of the individual certified operation."

The committee may wish to give guidance on the "reasonable time" allowed, but we suggest it be a minimum of 2 years.

## **Background**

The Livestock Committee and organic community have struggled with the language of the Origin of Livestock section of the rule. This recommendation is the result of a joint effort of many different components of the organic community – producers, certification agencies, large and small operations, and regional representatives. In drafting this recommendation, the committee considered several premises:

### **Premise #1**

Everyone concerned – first and foremost the USDA, as well as producers, consumers and certification agents – would be best served by a simple, rational and unified interpretation of the rule.

### **Premise #2**

It is also in the best interests of everyone -- the producers that must abide by this rule and the USDA and certification agencies that are charged with the responsibility of enforcing it – that we adopt a fair, just and nondiscriminatory interpretation.

### **Premise #3**

The rule should fit in with current organic practices. Organic dairy farmers must be able to meet the requirements, with some changes, perhaps. It should not crush the industry, but should allow it to continue to grow.

#### Premise #4

In addition to being simple, fair and attainable, our interpretation should be legally justifiable without a rule change.

We believe that the drafters of the rule also considered these premises. That is, their goal was to write a regulation that would be:

1. rational;
2. nondiscriminatory;
3. consistent with industry practices; and
4. legally justifiable, enforceable and defensible under the Act.

In taking on this Herculean task, the Livestock Committee attempted to put themselves into the minds of the rule writers. In so doing, they very carefully, with much deliberation, adopted this recommendation.

The NOSB Livestock Committee interprets Section 205.236 as requiring that once a dairy herd is certified, regardless of the method of getting there, all animals shall be under organic management from the last third of gestation.

This interpretation is consistent with the previously stated premises:

#### Premise #1

It is the simplest and most rational interpretation.

#### Premise #2

It is nondiscriminatory, which is important for enforcement purposes.

#### Premise #3

It fits in with many, but not all, current industry practices. It is consistent with the American Organic Standards. The main difference is that organic replacement animals are required to be organic from last third of gestation rather than for 1 year, with no exceptions. This will take time for some producers to adjust to; for needed materials to be added to the National List; and for the supply of available organic replacements to increase to meet demand. Organic from the last third of gestation is a place that the industry has been headed for many years. It has repeatedly been the stated goal. This rule interpretation makes it a true goal.

#### Premise #4

It is legally justifiable and enforceable under the Act. In fact, it is the only interpretation supported by the Preamble.

### **Discussion**

#### Questions asked and answered

Why does the exception in 205.236(a)(2) state that milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to production?

1. This language was included in the rule to comply with OFPA. It is a minimum requirement. Without this clause, all herds would have had to start by raising all their animals organically from last third of

gestation. This would have been prohibitive and the Act recognized that. Also, without the “1 year” clause, there could never have been a herd conversion allowance.

2. It does not mean that replacement animals can be purchased from conventional sources and managed organically for 1 year before producing organic milk. The only part of the rule that deals with replacements is 205.236(a)(2)(iii), which requires organic management from last third of gestation. The Preamble supports this.

Does the requirement that replacement animals be under organic management from the last third of gestation only apply to dairy herds that go through conversion in compliance with 205.236(a)(2)(iii)? No.

1. The language in (iii) clarifies that the clause applies to all dairy herds, no matter what route they followed to become certified. The writers wanted to emphasize that the conversion could not go on continually. This is supported by the Preamble.
2. The writers probably assumed that most new producers would opt to take advantage of the conversion exception. Industry practice supports this. It would have made no sense for the writers of the rule to have included (iii) unless they meant for it to apply to all dairy producers. There would have been no reason for them to have intentionally created an unfair and discriminatory burden forever on producers who transitioned their herd and their land in compliance with the conversion allowance.
3. The writers probably did not anticipate that the “1 year” language in (a)(2) would be construed to allow nonorganic replacements. Otherwise, they would have crafted the language differently or at least dealt with it in the lengthy and detailed Preamble. The absence of any specific reference to purchasing nonorganic heifers after certification, means that it not only wasn't the intent, the issue wasn't even anticipated.

Will this interpretation create a hardship for some producers? Yes, initially

1. There is no question that the requirement of last third of gestation for all replacement animals will create a hardship for many producers initially. The committee recognizes that it will take some time for producers to get there, especially considering it takes at least 24 months to create an organic dairy production animal. Due to the confusion over this issue, the committee anticipates that producers and certification agents will work within their organic systems plan to meet this requirement within a reasonable time, depending on the constraints of the individual certified operation.
2. Although it may seem unfair to some producers initially, it creates a level playing field for all producers over the long term.

## **Conclusion**

PCO supports the NOSB Livestock Committee's recommendation on interpretation of Section 205.236 Origin of Livestock with the addition of the following language:

“The committee anticipates that producers and certification agents will work within their organic systems plan to meet this requirement within a reasonable time, depending on the constraints of the individual certified operation.”

